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on the sole ground that, while the defendant is within the letter of the act, it is not within its intendment. The opinion proceeds upon lines somewhat similar to the decision in *Standard Oil Co.* v. *Commonwealth* (1905), — Va. —, 52 S. E. Rep. 390. There the statute imposed a fee upon all corporations "authorized by their charters" to act as public-service companies, on their obtaining a certificate of authority "to do business within the state." The defendant was such a corporation, but intended to exercise in Virginia no powers but those of an ordinary business company, and was in fact prohibited, by the state constitution, from exercising its public-service franchises there; yet it was held liable for the fee. The test laid down by the court in that case may well be applied to the facts of the principal case: that "no matter which of the numerous businesses authorized by its charter it may be carrying on in Virginia, if it is authorized by its charter to carry on the business of a public-service corporation" (or to carry on the business of meat-packing, as in the principal case), it is liable for the tax or fee. See also *Hartford Fire Insurance Co.* v. *State* (1905), — Ark. —, 89 S. W. Rep. 42, discussed in 4 MICH. LAW REV. 307, where the defendant, a Connecticut corporation, was held to be within the operation of the Arkansas statute imposing a penalty upon all corporations "conducting business in this state" that enter into any trust to regulate prices, although the only trust of which the defendant was a member operated only without the state, and did not attempt to regulate or affect rates within its boundaries. As to the power of a state to impose conditions or restrictions on foreign corporations doing business within its limits, see *Pollock* v. *German Fire Insurance Co.*, 132 Mich. 225, 93 N. W. 436; and to make the grant or privilege dependent on the payment of a certain tax, see *Horn Silver Mining Co.* v. *State of New York*, 143 U. S. 305, 36 L. Ed. 164; *State* v. *Hammond Packing Co.*, 110 La. 179, 34 So. 368. A corporation is within such a statute if it has an office and does any part of its ordinary business within the state. CLARK AND MARSHALL, CORPORATIONS, § 846. See also *Diamond Glue Co.* v. *U. S. Glue Co.*, 187 U. S. 611, 47 L. Ed. 328; *Mutual Life Insurance Co.* v. *Spratley*, 172 U. S. 602, 611, 43 L. Ed. 569.

CORPORATIONS—ILLEGAL PAYMENT OF DIVIDENDS—STATUTORY LIABILITY OF DIRECTORS—DISCRETION OF DIRECTORS.—Suit by a stockholder against his company and M, a former director thereof, under a statute making the directors liable "to the corporation and to its creditors, in the event of its dissolution or insolvency" for all dividends paid out of capital. To the bill, which charges that M was a member of a former board of directors which had illegally paid dividends out of capital, the corporation pleaded that the present directors and stockholders, acting in good faith, and for the benefit of the company, had refused to bring suit. *Held*, that as the New Jersey courts have held (*Appleton* v. *Am. Malting Co.*, 65 N. J. Eq. 375, 54 Atl. 454), that the statutory liability to the corporation is absolute, the directors have no discretion as to whether or not they shall sue. *Siegman* v. *Electric Vehicle Co. et al.* (1905), C. C. D. N. J. 140 Fed. Rep. 117.

In the absence of statutory provision to the contrary, the directors will not be held liable because it turns out that a dividend declared by them has

impaired the capital of the company, provided that they acted in good faith and without negligence, *Stringer's Case*, L. R. 4 Ch. 475; *Excelsior Petroleum Co.* v. *Lacey et al.*, 63 N. Y. 422; *Chick* v. *Fuller*, 114 Fed. Rep. 22, 29. But there are statutes in several of the states making the directors liable for all dividends paid out of anything but surplus or net profits, or which render the corporation insolvent. See *Williams et al.* v. *Brewster et al.*, 117 Wis. 370, 93 N. W. 479; *Hill* v. *Frazier*, 22 Pa. St. 320. In the principal case it was made the imperative duty of the directors to sue the guilty officers, and the prosecution of such suit is therefore not within those purely discretionary powers of the governing body with the exercise of which the courts will not interfere, 4 MICH. LAW REV. 395. In the recent case of *Penna. Iron Works* v. *Mackenzie et al.* (1906), — Mass. —, 76 N. E. Rep. 228, it was held that where the directors sell all the corporate property and pay the proceeds to the stockholders, leaving corporate creditors unpaid, this is a payment of dividends within the meaning of a statute making the directors liable for declaring dividends which render the company insolvent. See also *Ellis et al.* v. *French-Canadian Co-op. Ass'n et al.* (1905), — Mass. —, 76 N. E. Rep. 207.

CORPORATIONS—ULTRA VIRES CONTRACT—POWERS OF RAILROAD COMPANY—ESTOPPEL.—Defendant railroad covenanted that if plaintiff would make certain improvements on its summer hotel, located on the line of said railroad, it would pay such "commissions" on its receipts from traffic to and from the hotel as would insure the payment of dividends and interest to the stockholders and bondholders of the hotel company. In reliance upon this agreement plaintiff issued its bonds and used the proceeds thereof in improving its property, and in this suit for breach of covenant, alleges that defendant's earnings were greatly increased thereby. To the plea of ultra vires, plaintiffs demurred. *Held:* (1) That the agreement is ultra vires. (2) Defendant is not estopped from pleading its want of power. *Western Maryland R. Co.* v. *Blue Ridge Hotel Co. of Washington County* (1905), — Md. —, 62 Atl. Rep. 351.

(1) On the first proposition the court follows *Davis* v. *Old Colony R. Co.*, 131 Mass. 258, 41 Am. Rep. 221. But in *Richelieu Hotel Co.* v. *Mil. Encampment Co.* 140 Ill. 248, 33 Am. St. Rep. 234, a subscription by an incorporated hotel company to another company which was seeking to bring a military encampment to the city was held intra vires. In *Kraft* v. *West Side Brewery Co.* (1905), — Ill. —, 76 N. E. Rep. 372, a mortgage given to a brewery corporation to secure a loan to enable a borrower to erect a saloon for the sale of beer manufactured by the lender, was held to be within the power of the corporation. See also *State Bd. of Agriculture* v. *Citizens' St. R. W. Co.*, 47 Ind. 407, 17 Am. Rep. 702; *Jacksonville, etc., Co.* v. *Hooper*, 160 U. S. 514, 40 L. Ed. 515. (2) Where an ultra vires contract has been performed by one of the parties and benefits have been received by the other from such performance, the courts of several states hold that an action will then lie on such contract. *Whitney Arms Co.* v. *Barlow*, 63 N. Y. 62, 20 Am. Rep. 504, *Denver Fire Insurance Co.* v. *McClelland*, 9 Colo. 11, 59 Am. Rep. 134, 2 WILGUS CORP. CAS. 1217. But the contrary has been uniformly held in the